

OCT 31 1977

MICHAEL BODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

77-137

WAYNE EARL ELLISON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION SUGGESTING DEATH OF THE PETITIONER,
WAYNE EARL ELLISON AND PRAYING THAT HIS
PETITION FOR A WRIT OF CERTIORARI BE GRANTED
WITH INSTRUCTIONS THAT THE INDICTMENT AGAINST
HIM BE DISMISSED AB INITIO

JOHN D. CLOUSE
1004 Hulman Building
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Telephone: (812) 424-6671
Counsel for Petitioner

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The petitioner, Wayne Earl Ellison, by his counsel, John D. Clouse, suggests petitioner's death on the 14th day of October, 1977, and moves this Honorable Court to grant his petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit with instructions to order the indictment against him to be dismissed *ab initio*.

He attaches a supporting affidavit, and invites opposing counsel, the Solicitor General of the United States, to satisfy himself of the truth of the matters asserted herein and thereafter make appropriate response hereto.

That this motion is made pursuant to the authority of *Durham v. United States*, 401 U.S. 481 (1971).

JOHN D. CLOUSE
1004 Hulman Building
Evansville, IN 47708
Telephone: (812) 424-6671
Counsel for Petitioner

SUPPORTING AFFIDAVIT

STATE OF INDIANA)
) SS:
 COUNTY OF VANDERBURGH)

Michael Keating, being first duly sworn, upon his oath deposes and says:

1. That he is an associate of petitioner's counsel, John D. Clouse, and he makes this affidavit because John D. Clouse will be out of his office from the 18th day of October, 1977 to the 21st day of November, 1977, most of which time will be spent outside of the continental limits of the United States, namely in the South Pacific Ocean. That he makes this affidavit while John D. Clouse is absent in the hope that the valuable time of opposing counsel and this Honorable Court will thereby be saved.

2. That the above motion and this affidavit was drafted by the said John D. Clouse, counsel of record for petitioner and a member of the bar of this Court, prior to his departure.

3. That he is informed, and believes, that a death certificate has not as yet been issued for petitioner, but again he makes this affidavit and will file the above motion at his earliest opportunity in the interests of time saving.

4. That he is informed, and verily believes, that petitioner died on or about the 14th day of October, 1977, based upon, *inter alia*, the following article which appeared in "The Evansville Courier", a newspaper of general circulation in Vanderburgh County, Indiana, on the 15th day of October, 1977, to-wit:

**"ELLISON FOUND DEAD
 WITH GUN AT HIS SIDE**

Wayne Ellison, former pharmacist convicted last year along with the late Dr. Charles Moehlenkamp on federal drug charges, was found dead Friday evening after apparently shooting himself, according to police.

Ellison, 37, of 11711 Darmstadt Road, was found by his 14-year-old son, Scott, shortly after 6 p.m. Friday, lying face up on a lawn chair at the south side of the Ellison home, according to county police.

Deputy Coroner William Phipps placed the time of death at 2 p.m. Friday.

Phipps said Ellison was shot above the right ear with a 9mm automatic pistol found by police at Ellison's right side.

Police said Ellison fired the weapon at point-blank range with only one bullet in the chamber. The clip was empty, police said.

Police said Ellison's children arrived home from school at about 3 p.m. and his wife, Gayle, came home at about 4 p.m.

The family searched for Ellison but failed to find him right away and figured he was out with a friend, police said.

Autopsy to be performed

Phipps was called to the scene by police and the deputy coroner pronounced Ellison dead at 7 p.m., Phipps said.

He said an autopsy would be performed Saturday. Preliminary findings indicate the death will be ruled a suicide, Phipps said.

Police said Ellison apparently left no note.

Mrs. Ellison told police her husband had been very depressed lately over his legal problems and lack of work.

Ellison, following his conviction, was stripped of his pharmaceutical license and gave up ownership of his drug store, Wayne's Pharmacy, 20 E. Campground Road.

Ellison and Moehlenkamp were accused of being involved in an alleged scheme in which Moehlenkamp prescribed drugs, sometimes with false names and addresses, and encouraged

patients to have them filled at Wayne's Pharmacy, located about 200 yards from Moehlenkamp's office.

Ellison was charged with dispensing the drugs with the knowledge the prescriptions had been issued illegally.

Appeal was denied

Ellison, who was sentenced to 18 months in prison, appealed his conviction, but last July the U.S. Court of Appeals in Chicago upheld the conviction.

At the same time, the appeals court declared the conviction of Moehlenkamp null and void and ordered the indictment against him dismissed.

Ellison was a member of St. Anthony Catholic Church, the Evansville Country Club, North Side Kiwanis Club, the Kennel Club, state and national pharmaceutical organizations and was baseball coach for the Scott Township Civic League.


Other than his wife and son, Ellison is survived by a daughter, Cheryl, at home; another son, Christopher, at home; his parents, Mr. and Mrs. James Ellison of Evansville; two brothers, Jim of Evansville and David of Darmstadt; four sisters, Mrs. Sarah Elpers of St. Wendel, Mrs. Mona Cheaney and Vickie and Debbie Ellison, all of Evansville; and a grandmother, Mrs. Ellis Bretz of Evansville.

Arrangements are pending at Miller and Miller Funeral Home."

Further, your affiant sayeth not.


MICHAEL KEATING

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for said County and State this 26 day of October, 1977.


SHELEE GAINES
NOTARY PUBLIC

My Commission Expires:

November 12, 1979